

Supreme Court, U.S.

FILED

JUL 29 1976

MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1106

UNITED STATES OF AMERICA,

Petitioner

—v.—

GREGORY V. WASHINGTON

ON WRIT OF CERTIORARI TO THE
DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR CERTIORARI FILED MARCH 5 1975
CERTIORARI GRANTED JUNE 1, 1976

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—v.—

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DOCKET ENTRIES

3/20/73 Indictment filed. Assigned to Judge Braman, arraignment set for 4/2/73 at 9:00 a.m.

4/2/73 Arthur B. Reid, Official Court Reporter. Defendant informed of complaint and right to counsel, plea of not guilty entered. Bond is personal recognizance. Case continued until 5/30/73 for trial and 5/16/73 for status hearing.

4/13/73 Defendant's motion to extend time for filing motions filed.

4/18/73 Defendant's motion to extend time for filing granted. Defense motion due by 4/23/73.

4/24/73 Government's motion to certify indictment as Felony II filed.

4/25/73 Defendant's motion to quash indictment and motion to suppress statements filed.

5/8/73 James Holland, Official Court Reporter. Government's motion to certify case to felony II section heard and granted. Case certified to Felony Branch to be certified to a felony I Judge Bond continues.

5/9/73 Reassigned to Judge Hannon.

5/16/73 Salvatore J. Rizza, Official Court Reporter. Case Continued until June 4, 1973, for trial. Defendant not present, attorney to notify defendant for trial date.

6/4/73 Louis P. Waibel, Official Court Reporter. Case continued until 7/24/73, for trial. Motion to be heard on 6/29/73. Defendant advised.

6/29/73 John Hrozenck, Official Court Reporter. Motion to suppress statements made to police denied. Motion to suppress statements made in Grand Jury granted.

7/5/73 Patricia Y. Sanborn, Official Court Reporter.
 The defense motion to dismiss indictment is hereby ordered granted. The court further ordered, that the Grand Jury testimony filed in this court jacket remains therein pending possible appeal. (see order within).

7/9/73 NOTICE OF APPEAL FILED.

**IN THE SUPERIOR COURT
 FOR THE DISTRICT OF COLUMBIA**

Case Numbers: 69124-72 and 69110-72

UNITED STATES OF AMERICA

vs.

RUBEN WOODARD AND SAMUEL LEE ZIMMERMAN

February 5, 1973

The testimony of GREGORY VINCENT WASHINGTON was taken in the presence of a full quorum of the Grand Jury.

BEFORE:

RICHARD S. SHINE, ESQ.
 Assistant United States Attorney

* * *

[Examination of Gregory Vincent Washington]

* * *

[3] Q Have a seat behind you there.
 Could you state your full name and address, please?
 A Gregory Vincent Washington, 1138 5th Street,
 Northeast.

Q Sir, is that an apartment or a house?

A A home.

Q Sir, before I ask you any questions. You're here under subpoena, is that correct?

A Yes.

Q Before I ask you any questions I have to tell you what your rights are. I'd like you to listen carefully and I'm going to ask you some questions about your rights afterwards.

You are not under arrest. You're just here by way of subpoena.

Before I, or anybody else in the Grand Jury, ask you any questions you must understand what your rights are.

You have a right to remain silent. You are not [4] required to say anything to us in this Grand Jury at any time or to answer any questions.

Anything you say can be used against you in Court.

You have the right to talk to a lawyer for advice before we question you and have him outside the Grand Jury during any questioning.

If you cannot afford a lawyer and want one a lawyer will be provided for you.

If you want to answer questions now without a lawyer present you will still have the right to stop answering at any time.

You also have the right to stop answering at any time until you talk to a lawyer.

Now, do you understand those rights, sir?

A Yes, I do.

Q And do you want to answer questions of the Grand Jury in reference to a stolen motorcycle that was found in your truck?

A Yes, sir.

Q And do you want a lawyer here or outside the Grand Jury room while you answer those questions?

A No, I don't think so.

Q Okay, sir, could you fill out the back of this card? Those are the same questions, I think.

You read or had read to you the warning as to your [5] rights.

A Since you've read them to me do I have to read them?

Q You have had them read to you. The answer to that would be "yes", right?

Mr. Washington, do you own a white panel truck, a Ford van truck, white in color, 1965, D. C. tags C-14170?

A I did.

Q Did you own that truck on December 3rd, 1972?

A Yes.

Q What has happened to the truck?

A It's been sold.

Q I see. When did you sell it?

A About three weeks ago.

Q On December 3rd, 1972, were you driving the truck at all that day?

A Yes.

Q What were you doing with it?

A We had taken a trip, Ruben Woodard, Sammy Zimmerman and myself, and we went to Baltimore.

Q What time did you go to Baltimore? When during that day about?

A What time did I arrive in Baltimore?

Q Yes.

A About 3:00 or 4:00 o'clock in the evening.

Q 3:00 or 4:00 p.m., in the afternoon?

[6] A Yes.

Q What had you gone to Baltimore for?

A We went to a junk yard that was in Baltimore.

Q Did you pick up some stuff?

A Yes, parts.

Q Where was the junk yard?

A (No response.)

Q Do you know the name of the junk yard?

A No, I don't. It's out U. S. 1 but it's in Baltimore. I don't know the name of it.

Q What kind of parts did you pick up at the junk yard?

A Two rear axles and a side vent frame, window frame, for my car.

Q This was all for your car?

A Yes.

Q What kind of car is that?

A '62 Chevrolet.

Q Were you driving?

A Yes.

Q What time did you leave Baltimore to come back to Washington that day?

A About 5:30 or 6:00.

Q Did all three of you come back to Washington?

A Yes, sir.

Q What happend when you got back to Washington?
What [7] did you do?

A I took Woodard and Zimmerman home.

Q Where did you take them?

A I took both of them over to Zimmerman's wife's house on 4th and Newcomb Street, Southeast.

Q What time was that that you dropped them off at Zimmerman's wife's house?

A About 8:30 or 9:00 o'clock.

Q At night?

A Yes.

Q That's on the night of December the 3rd?

A Yes.

Q What did you do after that?

A I just started driving. I went over to Georgetown.

Q What were you going to Georgetown for?

A I was going to stop past the Circle theatre to see what was playing up there. I usually go up there sometimes.

Q You mean go to a movie?

A Yes.

While I was up that way there was a guy up there and he asked me would I give him a lift and I said, "Okay".

Q Where did you first see this guy?

A It was in the 2100 block of Pennsylvania Avenue.

Q Is that at the corner of—on Pennsylvania Avenue between 21st and 22nd?

[8] A Yes.

Q Did he have anything with him?

A He had his motorcycle.

Q Was that a Honda motorcycle, did you notice?

A I don't know what the name was.

Q What color was it?

A Red and silver.

Q Had you ever seen that man before?

A No, I hadn't.

Q Were you stopped when he first approached you, or did he wave you down, or what?

A I was already stopped. He asked me before I got back to the truck.

Q Why had you stopped?

A To see what was at the Circle Theatre.

Q You had just been to see what was at the Circle Theatre and you were coming back to your truck when this man stopped you?

A Yes.

Q Did he have his motorcycle on the sidewalk or the street?

A It was in the street.

Q Was he riding it or pushing it?

A Neither one. It was just sitting there.

Q Just sitting there?

[9] A Yes.

Q Had you ever seen this man before?

A No, I hadn't.

Q Can you describe him?

I was, he's a caucasian.

Q What was he wearing?

A Jeans jacket and pants.

Q Did he say where he wanted you to take him?

A Yes.

Q Where?

A Up on 33rd and Reservoir Road, I guess it was.

Q What did he say was there?

A That's where he wanted me to drop him off at.

Q Did he say what was up there, why he wanted to go there?

A No.

Q Did he say that the motorcycle didn't work?

A Yes.

Q Did you help him put the motorcycle in the truck?

A No, I didn't.

Q Did he put it in the truck himself?

A Yes.

Q Then what happened after he put the motorcycle in the truck?

[10] A I went down Pennsylvania Avenue to Washington Circle and then took the cutoff on K Street.

Q Was he in the truck with you?

A Yes. I was heading toward Wisconsin Avenue and K and truck broke down.

Q What went wrong with the truck, do you know?

A No, 'cause Sammy Zimmerman had been doing work to it. That past week he had worked on it and he knew what was wrong with it.

Q What happened when the truck broke down? Where was it that the truck broke down?

A 29th and K.

Q 29th and K, Northwest?

A Yes.

Q What happened when the truck broke down?

A I went up to the BP station on, I think it was 29th or 30th Street and M Street, Northwest.

Q What did the man who was in the truck with you do?

A I had to lock the truck, you know, 'cause I had some of my personal belongings in it, so he stood on the outside of the truck and waited for me to come back.

Q And you went to the BP gas station and did what?

A Called Zimmerman up.

Q What did you tell Zimmerman?

A To come and pick the truck up, to fix the truck, that [11] the truck had broke down again.

Q Did he say he was going to come down?

A Yes.

Q What did you do then?

A I stayed up at the BP station.

Q Where did you tell Zimmerman to meet you?

A At the BP station.

Q Then what happened?

A Well, I waited and waited. I waited long enough where they should have been up there and no one showed so I went back down to where the truck was and the truck was gone.

Q When you talked to Mr. Zimmerman on the phone and told him to come down to the BP station, did you tell him where the truck had broken down?

A Yes.

Q I show you a photograph which is marked Number 3 in blue pen, or black pen, up in the right hand corner.

Do you recognize that photograph? What is it the photograph of?

A That's the inside of my truck.

Q Is that the motorcycle that was in there?

A It looks like but it wasn't laying like that. It wasn't laying in the same place.

Q Did you have a battery in the back of the truck?

A Yes, I had quite a few junk batteries in the back of the truck.

[12] Q Did you have any seats in the back of the truck?

A Yes, two white bucket seats.

Q Where did you get those?

A From a friend of mine that works at Sunoco station. They came off his Plymouth Belvedere.

Q What did you have those for?

A He had junked the car and we were planning on keeping the bucket seats and putting them on the side of the truck.

Q I show you a photograph marked Number 12. Can you tell me what other property is shown in that photograph?

A A spare tire.

Q Where did you get that?

A This was in the trunk of Zimmerman's car and we cleaned it out.

Q Did you ever see this man—the man who put the motorcycle in the back of your truck, did you at any time see him wheeling or pushing the motorcycle?

A No.

Q It was just standing on—did you say the street or the sidewalk?

A The street.

Q Was he standing next to it on the street?

A He was standing right close to it.

Q When you called Mr. Zimmerman to tell him to come down to fix the truck, did you tell him that you had a [13] motorcycle in the back of it?

A No, I didn't.

MR. SHINE: Any questions, Mr. Foreman?

A JUROR: What happened to the guy that you picked up?

THE WITNESS: I don't know, because, when I came back down on K Street looking for the truck, he and the truck was gone.

A JUROR: You talked to Mr. Zimmerman after this?

THE WITNESS: After the truck was gone?

A JUROR: Yes.

THE WITNESS: No.

BY MR. SHINE:

Q You at no time talked to Mr. Zimmerman?

A I talked to him—I think he had called his wife. I hadn't talked to him till the next day. He called his wife and told his wife that he was being held at the Police Station.

Q Have you at any time since then talked to Mr. Zimmerman?

A Yes.

Q About this incident?

A Yes.

Q What did he tell you?

A He told me that the officer had taken his license and [14] taken the registration of the truck. The only way I could get the truck back was for me to go up there myself to get it.

Q What did he tell you about how he was arrested?

A He didn't tell me that.

Q You didn't ask him?

A No.

Q You weren't curious about what happened to your truck and why your truck was impounded and what the circumstances were?

A Not really. Well, Officer—the Auto Squad—(Snood), I think his name is, he had called my mother and my mother informed me and I talked to him and he told me that that the motorcycle was stolen in the back of the truck.

THE FOREMAN: After you left the service station that night and went back to where your truck was parked and the truck was gone did you then call the police?

THE WITNESS: No.

THE FOREMAN: You didn't have any idea who had the truck?

THE WITNESS: I figured that Zimmerman might have had it.

A JUROR: Do you think he would have gone off and left you like that?

THE WITNESS: I guess maybe he couldn't find a BP station.

[15] A JUROR: How far was the BP station from where the truck broke down?

THE WITNESS: Right up 29th Street, one block.

MR. SHINE: You mean he could have found the truck where it had broken down but he couldn't find the BP station?

THE WITNESS: I'm saying he might not have found the BP station.

THE FOREMAN: Have you found out who did take your truck?

THE WITNESS: He had it.

THE FOREMAN: Zimmerman did take your truck?

THE WITNESS: Yeah.

A JUROR: Did he state whether or not this white guy was still there?

THE WITNESS: No, he said that he didn't see any white guy.

THE FOREMAN: The motorcycle was still in the truck?

THE WITNESS: Was the motorcycle still in the truck when he got in the truck?

THE FOREMAN: Yes.

THE WITNESS: Yes.

BY MR. SHINE:

Q Did he tell you that?

A Yes.

[16] Q You have talked to him about what happened when he got arrested, is that right?

A He told me that there was a motorcycle in the back of the truck.

Q When he got arrested?

A Yes.

Q You have talked to him about what happened? You have talked to Mr. Zimmerman about what happened when Mr. Zimmerman got arrested, is that correct?

A Yes.

Q When was that?

A It was that Monday.

Q The Monday after he was arrested?

A Yes.

Q What did Mr. Zimmerman tell you about the circumstances of his having been arrested?

A He asked me where the motorcycle came from and I told him.

Q What specifically did you tell him?

A That I had picked up the guy and that the guy put the motorcycle in there and I was giving him a lift when the truck broke down.

Q What did Mr. Zimmerman tell you about how he got arrested?

A He told me that the motorcycle had been stolen.

[17] Q Did he tell you what he had done when he first got to the truck, who was there, or what was happening?

A No.

THE FOREMAN: How would the police know the motorcycle was in the truck?

THE WITNESS: I don't know.

THE FOREMAN: What was wrong with the truck did he tell you?

THE WITNESS: The carburetor was bad.

A JUROR: Mr. Washington, you said that you locked your truck up because you had personal belongings in it?

THE WITNESS: Yes.

A JUROR: When Mr. Zimmerman reported to the truck did he have a key to your truck?

THE WITNESS: He has a key, he had a key, I mean.

A JUROR: Did you ask him why he didn't report to the location you asked him instead of going straight to the truck?

THE WITNESS: No, I didn't.

MR. SHINE: Any other questions?

A JUROR: What did you do after you found the truck was gone?

THE WITNESS: I called back to Mr. Zimmerman's house and his wife said that he hadn't called back yet so I went down to my girlfriend's house. I caught a bus and went to my girlfriend's house.

[18] A JUROR: You didn't look for the truck anymore?

THE WITNESS: I kept calling his wife's house. I think it was about 12:30, she called up my girlfriend's house and told my girlfriend that Zimmerman was in jail.

MR. SHINE: Sir, when were you born?

THE WITNESS: November 3rd, 1952.

MR. SHINE: Any other questions?

(No response.)

All right, sir. Will you step outside?

(Whereupon, the witness was excused.)

Whereupon,

GREGORY VINCENT WASHINGTON

was recalled as a witness and, having first been previously duly sworn by the Foreman of the Grand Jury, was examined and testified as follows:

BY MR. SHINE:

Q Mr. Washington, you're still under oath, okay?

A Yes, sir.

Q Where did you say you dropped off Mr. Zimmerman and Mr. Woodard?

A At Mr. Zimmerman's house.

Q Which is where?

A 4th and Newcomb Street, Southeast.

Q You went from there directly to the Circle Theatre, or did you ride around in Georgetown?

[19] A Drove around.

Q Just drove around?

A Yes.

Q Did you drive up by the Hot Shoppe in the 4100 block of Wisconsin Avenue?

A No.

Q You weren't up in that direction at all?

A No.

Q Were you standing by the back of the truck when this man put the motorcycle in the truck?

A No.

Q Where were you?

A Seated in the driver's seat.

Q You didn't go around back and watch this man put the motorcycle in the back of your truck?

A No. I could see through the back.

Q You were able to observe him putting it in?

A Yes.

Q Was he able to steer the motorcycle at all?

A I don't know.

Q Did he have any difficulty putting the motorcycle in the back?

A Yes.

Q What kind of difficulty?

A It was pretty loaded with junk batteries and auto [20] parts and stuff and he was having a problem trying to keep it rolling.

Q It was rolling?

A He had to slide it.

A JUROR: How high is that back opening of the truck off the sidewalk, or off of the street?

MR. SHINE: Ladies and gentlemen, the reporter is having trouble hearing.

A JUROR: How far would he have to lift that to get it into the truck?

THE WITNESS: About two feet.

BY MR. SHINE:

Q You didn't help him lift it the two feet?

A No.

Q Was this man going to pay you for giving him a lift out there?

A No. I given hitchhikers lifts all the time.

Q With motorcycles?

A No.

A JUROR: Do you have any familiarity with motorcycles?

THE WITNESS: No.

A JUROR: Do you know whether or not anybody else assisted this man in putting this bike in the back of the truck?

THE WITNESS: No, no one.

[21] A JUROR: No one helped him?

THE WITNESS: No.

A JUROR: Did he have a board to roll it up?

THE WITNESS: No.

BY MR. SHINE:

Q Do you know how Mr. Zimmerman got down to where your truck was, Mr. Zimmerman and Mr. Woodard from his wife's house?

A No, I don't.

Q Do you know whether Mr. Zimmerman and Mr. Woodard have a car?

A They have a car but I don't think they drove them down.

Q Why not?

A I don't know. I don't think they drove them down because they just said that they'd be right down.

Q How would they get down if they didn't get down in a car?

A Somebody might have took them down.

A JUROR: Did this gentleman place this motorcycle in the rear of the truck or the side?

THE WITNESS: In the rear.

A JUROR: He brought it up through the rear?

THE WITNESS: Yes.

BY MR. SHINE:

[22] Q When you talked to Mr. Zimmerman did he say that he was going to come down with Mr. Woodard?

A Were him and Mr. Woodard coming down?

Q When you talked to Mr. Zimmerman on the phone from the BP station to ask him to come down and fix the truck, did he say that he was going to come down with Mr. Woodard?

A Was he coming down with Woodard?

Q Did he tell you that he was coming down with Mr. Woodard?

A No, he didn't.

Q Do you know why Mr. Woodard would have come down?

A There was no reason for him to stay over his wife's house, with his wife.

Q With Mr. Zimmerman's wife, you mean?

A Right.

A JUROR: Mr. Washington, how long did you wait at that BP station before you went back to the truck?

THE WITNESS: About two and a half hours.

BY MR. SHINE:

Q What time was it, if you can recall, when the truck broke down? What time did you say you dropped off Mr. Zimmerman?

A Around 8:00, 8:30.

Q You dropped him off around 8:00 or 8:30. How long did you drive around before you went to the Circle Theatre?

[23] A Not too long. I just headed south on the Southwest Freeway, I think it's part of 95, and went through the park up 17th Street to Pennsylvania Avenue and went straight on up Pennsylvania.

Q You got there what, about 15 or 20 minutes later to that vicinity?

A Yes.

Q Is that when you saw this man?

A Yes.

Q When did you drive around Georgetown or did you go directly to the Circle Theatre?

A I hadn't gotten to Georgetown. I was going to drive to Georgetown after I had stopped past the Circle Theatre.

Q You would have gotten to the vicinity of the Circle Theatre what about a quarter past 8:00 or 8:45, sometime around there? Could it have been any later than quarter of 9:00 at night when you got to the Circle Theatre?

A Yes.

Q How much later?

A Maybe about 15 minutes.

Q It was no later than 9:00 o'clock at night?

A No.

Q By the time this man got his motorcycle in the truck and you drove to where it broke down, what time would it have been then at the latest?

[24] A 9:30 or 9:45.

Q It would have taken Mr. Zimmerman about 15 to 20 minutes to drive from his house down to where the truck was?

A Yes.

Q And you waited at the gas station for two and a half hours you said?

A Yes.

MR. SHINE: Any other questions?

A JUROR: Has any effort been made to locate the owner of the vehicle?

MR. SHINE: There has been testimony to that already before another Grand Jury. The owner of the vehicle has testified.

A JUROR: Do you know how many CC's this motorcycle was?

THE WITNESS: No.

MR. SHINE: Any other questions?

A JUROR: When he put it in the truck did he leave it facing the front of the truck?

THE WITNESS: The motorcycle was it facing the front of the truck?

A JUROR: Yes.

THE WITNESS: Yes. It looked like it was sitting different in the photograph.

A JUROR: You said that you observed him putting the [25] bike in the truck?

THE WITNESS: Yes.

A JUROR: Tell me, describe to me how he put this bike in the truck.

THE WITNESS: He lifted the front wheel up and set it in the truck then he tilted it to the side because it wouldn't go straight in.

A JUROR: The truck must be a little bit low then if he could put the front wheel in it. It must have been right low.

THE WITNESS: About two feet.

A JUROR: A man can't lift a motor this size by himself.

THE WITNESS: Will you repeat your question?

A JUROR: I want you to explain how he put it in the truck.

THE WITNESS: Right.

He put the front wheel up there first and then he got in back of it and he started pushing it and it started to go into a tilt and he slid it the rest of the way up.

A JUROR: Do you know anything about a motorcycle?

THE WITNESS: No.

A JUROR: If I asked you about a lock—do you know that motorcycles have a front wheel lock on them?

THE WITNESS: Yes.

[26] A JUROR: That would mean the wheel could not turn?

THE WITNESS: I think so.

A JUROR: Did the motorcycle appear to be that way to you? In other words, was the front wheel turned?

THE WITNESS: I didn't notice it.

MR. SHINE: You didn't notice whether the front wheel could be turned or not by this man?

THE WITNESS: No, I didn't.

A JUROR: Did you state that the wheels would not turn over, this is why he had to slide it?

THE WITNESS: No, because of the back of the truck, there were batteries and stuff laying down in it and he had to slide it in.

A JUROR: You did say that he picked it up off the street?

THE WITNESS: Yes, he picked it up.

BY MR. SHINE:

Q Did you have to back the truck up to where the motorcycle was?

A Yes.

Q Why did you have to do that? Did he ask you to do that, that man?

A I just backed it on up.

Q How far was the motorcycle from where you had parked the truck when you first saw the motorcycle?

[27] A About six cars back. I was parked in front the GH Medical Center, or something like that, on Pennsylvania Avenue and he was by this little bar and restaurant next door to the Circle Theatre.

A JUROR: When you picked him up did he ask you to take him to a specific address?

THE WITNESS: No.

A JUROR: He just told you what?

THE WITNESS: 33rd and Reservoir Road.

BY MR. SHINE:

Q He didn't tell you what was up there?

A No.

Q You didn't ask him?

A No.

A JUROR: Why do you remember the place so plainly?

THE WITNESS: 33rd and Reservoir Road?

A JUROR: Yes.

THE WITNESS: I just remember it.

A JUROR: Mr. Washington, did he pay you anything?

THE WITNESS: No, he didn't.

A JUROR: You just did it out of your own good will?

THE WITNESS: Yes.

BY MR. SHINE:

Q Did you ever see this man before that night?

A No, sir.

[28] Q Have you ever seen him since?

A No, sir.

Q Did he tell you what his name was?

A No.

Q He's just a complete stranger to you?

A (Nodding).

Q What?

A Yes, sir, I'm sorry.

MR. SHINE: Any other questions?

A JUROR: How much did this man seem to weigh?

THE WITNESS: I'm not sure.

A JUROR: You'd probably guess 150 or 60?

BY MR. SHINE:

Q How much do you weigh?

A 264.

Q Did he weigh as much as you?

A No, smaller.

Q Was he heavy build, medium build?

A Medium build, I think.

Q Did he look like he weighed more than 200 pounds?

A No.

MR. SHINE: Any other questions?

(No response.)

All right, sir. You may wait outside.

(Whereupon, the witness was excused.)

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

* * * * *
Criminal No. 16947-73

THE UNITED STATES OF AMERICA

v.

RUBEN WOODARD, SAMUEL L. ZIMMERMAN,
GREGORY V. WASHINGTON

Violation: 22 D.C. Code 2201; 2205
(Grand Larceny; Receiving Stolen Property)

The Grand Jury charges:

FIRST COUNT:

On or about December 3, 1972, within the District of Columbia, Ruben Woodard, Samuel L. Zimmerman and Gregory V. Washington stole property of Eugene L. Thornton, Jr., of a total value in excess of \$100, consisting of a motorcycle.

SECOND COUNT:

On or about December 3, 1972, within the District of Columbia, Ruben Woodard, Samuel L. Zimmerman and Gregory V. Washington, with intent to defraud, received property of Eugene L. Thornton, Jr., of a value in excess of \$100, consisting of a motorcycle, which had been stolen, knowing and having cause to believe the said property had been stolen.

A TRUE BILL:

/s/
Foreman

/s/ Harold H. Titus, Jr.
Attorney of the United States in
and for the District of Columbia

[1] IN THE SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION

Docket No. 16947-73

UNITED STATES OF AMERICA

v.

GREGORY V. WASHINGTON, DEFENDANT

Washington, D. C.

Friday, June 29, 1973

The above-entitled cause came on for hearing before the HONORABLE JOSEPH M. HANNON, Judge, in Courtroom No. 4, Civil Division Building, commencing at approximately 2:15 o'clock p.m.

APPEARANCES:

On behalf of the Government:

RICHARD L. BEIZER, Esquire
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[3] TRANSCRIPT OF TESTIMONY

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THE COURT: All right. Let's go forward.

MR. BEIZER: Your Honor, so that I am perfectly clear as to where we stand at this point, is Your Honor considering both the motion to suppress the statement and the motion to dismiss the indictment at this time?

THE COURT: That is what is before me.

MR. BEIZER: I'm sorry, Your Honor. I didn't hear you.

THE COURT: I said, yes, that's what is before me.

MR. BEIZER: At this point, Your Honor, I would like to call Detective Snoots because he was the one who had contact with Mr. Washington on December 4th when I believe the first motion was involved.

THE COURT: All right. This is directed towards the intelligent waiver of Fifth Amendment rights as I understand it.

MR. BEIZER: This would be on the motion to suppress after the statement was made at the Police Department.

THE COURT: There are two statements, one before the Grand Jury, and another one made before the Police Department?

MR. BEIZER: That is correct, Your Honor.

THE COURT: All right. Which came first?

[4] MR. BEIZER: The police statement.

THE COURT: All right. Let's get to it.

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[DIRECT EXAMINATION OF RALPH L. SNOOTS]

MR. BEIZER: Perhaps he should go forward?

THE COURT: It's Mr. Cherrin's motion and as far as I'm concerned he bears the burden, but if it will expedite it you can go forward if you and he agree.

MR. BEIZER: I'll go forward, Your Honor.

BY MR. BEIZER:

Q Detective, in a loud clear voice, will you state your full name and spell it, please?

A Ralph L. Snoots, S-n-o-o-t-s, Plainclothes Detective assigned to the Auto Theft Section, Metropolitan Police Department, Washington, D.C.

Q Were you so assigned on the 3rd day of December 1972?

A I was, sir.

Q And what time were you working during that day, if you recall?

A Reflecting to my notes, I see that I was working [5] the seven in the evening to three in the morning shift.

Q Did there come a time when you received a call for a stolen automobile or possibly a stolen truck on that evening?

A I did, sir.

Q Will you tell the Court what happened from that point, please?

A On—

MR. CHERRIN: (Interposing) Your Honor, I see that he is referring to certain notes and I would ask that I be allowed to see them.

THE COURT: Do you need them, Officer Snoots?

THE WITNESS: Well, it has been some months, Your Honor, and I do come in contact with a lot of cases.

MR. CHERRIN: I have no objection to his using the notes as long as I can take a look at them.

THE COURT: Well, if he looks at them and testifies from them, you will be able to look at them.

MR. CHERRIN: Well, he has been doing that, and I wonder if I could see them now.

THE COURT: No, not until he has testified. After he has testified, then, Mr. Cherrin, you may look at them.

MR. CHERRIN: Very well.

THE COURT: Whatever he looks at and testifies, sir, and you establish as a matter of record that he looked at it [6] and relied on it in his testimony, then you may see it.

MR. CHERRIN: Very well. I would say that he has.

THE COURT: You say what, please?

MR. CHERRIN: He has been referring to his notes.

THE COURT: Well, he hasn't done anything but give his name and he said he was assigned to the Auto Theft Squad, on December 3, 1972 he was so assigned, and on that day he received a call respecting a stolen truck. I believe that is what he testified to as the Court recalls.

BY MR. BEIZER:

Q Would you continue to tell His Honor what you did in response to that call?

A Viewing my notes, at approximately 2330 hours on December 3rd, 1972, I received a radio run to respond to the Second District Substation No. 1 which is located in the 3300 Block of Volta Place, Northwest, and on arriving there I had contact there with an Officer DuRant who was assigned to this substation.

He had placed two subjects under arrest—

THE COURT: What is his name again, please?

THE WITNESS: Officer Ralph DuRant.

THE COURT: Spell his last name.

THE WITNESS: D-u-R-a-n-t.

THE COURT: All right.

THE WITNESS: He had placed two subjects under [7] arrest for the theft and possession of a motorcycle.

Upon arriving there I interviewed one Samuel Lee Zimmerman and a Robert Woodard and both of these subjects refused any statements at that time.

I then proceeded to ascertain if the vehicle they were operating had been reported stolen.

Q What kind of vehicle was that, if you know?

A Again viewing my notes, it appeared to be a 1965 white Ford van bearing District registration C, like in Charlie, -14170.

After I had ascertained through the computer whether or not this vehicle had been reported stolen, I found that it had not. At that point I proceeded to obtain a listing on the vehicle.

Q What do you mean by a listing?

A A listing would mean our DMV files when tags are issued. It is computerized into a master book. The auditor of that section as well as the teletype section receive these books in order to ascertain the listing of tag numbers. We have them alphabetically by name and we have them by tag number and also by serial number of the vehicles.

THE COURT: Excuse me. May I ask you something, please?

Officer DuRant arrested these two men for the possession of a stolen motorcycle, is that correct?

[8] THE WITNESS: That's correct.

THE COURT: Was the stolen motorcycle inside this white van that you speak of?

THE WITNESS: Yes, Your Honor, it was. It was placed in the rear of the vehicle.

THE COURT: That was where it was when the officer arrested them, is that what you're telling me?

THE WITNESS: That's correct, Your Honor.

THE COURT: All right. So now you checked on the '65 Ford van and you find out that it has not been reported stolen, is that right?

THE WITNESS: That is correct, Your Honor.

THE COURT: All right. Go on from there.

THE WITNESS: After we found the vehicle not to be stolen, I obtained a listing by tag number on the vehicle and found that it was listed, or had a registered owner by the name of Gregory V. Washington who had an address or gave an address at the time he purchased tags of 1138 Fifth Street, Northeast, and he obtained these tags on 11/13/72.

At this point I made an attempt to contact Mr. Washington with reference to his truck. We felt at that point that the truck had possibly been stolen and was being used in the commission of another crime to transport another stolen vehicle.

I was unable to contact Mr. Washington that evening [9] but I did manage to stop by his house and leave a message with someone there for him to contact me as soon as possible with reference to his truck.

BY MR. BEIZER:

Q Was any further notice given to anyone in his house or to Mr. Washington? Did you state anything further than just to contact you with reference to the possibility of his truck being stolen?

A As far as I can remember, when I went to the premises I did ask them to have them tell him to contact me as soon as possible with reference to his truck.

Q Now this is just your unaided memory and you are not looking at your notes now, are you?

A No.

Q Now, is there any reflection in your notes as to what you actually said to that person who received your message for Mr. Washington at his house?

A No, sir. My notes were ended when I left the precinct that evening.

Q So this is just your unaided recollection and just your memory from this point on?

A That's correct.

Q All right. Officer, after you gave that message, did you at some time subsequent to that see Mr. Washington actually?

[10] A I did, sir.

Q And when did you see him, if you can recall?

A I believe it was either the next evening or the evening after that. I was also again working the evening shift from seven at night to three in the morning and Mr. Washington came down to see me.

Q This was in the evening, is that right?

A Yes.

Q Either the following day or the day after that?

A Yes, sir. I don't remember which day it was. It was one or two days after I left the note.

Q And where did he come to see you?

A He came to see me at the Auto Theft Section Office which is located at 300 Indiana Avenue, Room 3025.

Q What was your purpose in asking Mr. Washington to come down to that office?

A The reason why I asked Mr. Washington to come down was because in order to ascertain a registered owner, I would need to satisfy myself to see a proper registration for the vehicle and have that person present themselves in person to me with this registration slip and some other type of identification in order to satisfy the fact that he is the proper owner of the vehicle.

I would not accept a phone call in this particular instance.

[11] Q And what was your purpose in satisfying yourself that he was indeed the proper owner, if you indeed had such a purpose?

A I had Mr. Washington come down because, like I said, I was unable to contact him that night. If I would have contacted him that night I would have inquired of him about whether or not, of course, he was the registered owner of the vehicle, whether or not the vehicle had been stolen, whether or not he had reported it stolen or was in the process of reporting it stolen, et cetera, and I would have advised him of the circumstances surrounding our impoundment of the vehicle.

Q And when he came to see you on either the day after or the day after that, did you state to him what your purpose was in asking him to come down to see you at the police station, if you can recall?

A As far as I can remember, we had a brief conversation. It wasn't too long. I did advise him while I asked him the questions about the vehicle and did inquire, of course, as to the registration and whether or not he was the proper owner.

Q Did he satisfy you that he was the registered owner?

A He did.

Q And did you ask him if he was going to be a complainant with respect to the unauthorized use of that vehicle?

A As far as I can remember, I did ask him whether or [12] not he was wanting to press charges against the two subjects that had been operating the vehicle.

Q And what did he say?

A As far as I can remember, it went something to the effect that they were friends of his and that the truck had broken down and that they were going to fix it somehow. He went on to add although when I advised him of the circumstances surrounding how they had been arrested and why we impounded his vehicle, he stated that it was impossible for them to have stolen the motorcycle because he himself personally picked up a hippy-type person, and he gave a brief description of the subject and the motorcycle, somewhere away from where

they had been stopped prior to the officer stopping the two gentlemen.

Q Did your conversation continue after he had made that revelation that he had picked up this fellow with the motorcycle?

A At that point—

THE COURT: What do you mean?

BY MR. BEIZER:

Q Did he say anything further with respect to the motorcycle and the truck after he said that he was not going to be a complainant in a UUV case and that he indeed picked up the fellow with the motorcycle?

Did he say anything further with respect to giving [13] these fellows permission to use his truck or anything else?

A I believe he said he had given them permission to use the truck.

Q And he further stated that he was not going to press charges against them for using his truck?

A That's correct.

Q When he came to the police station, did he come there under a subpoena or under custody of any sort or was he in handcuffs at any time?

A No, sir. He came there of his own free will.

Q Can you describe the room where this interview took place for His Honor as best that you can recollect it was on the day that you had this interview with Mr. Washington?

A It was an office, it's a regular office and you have an entrance way and then there's a partition. A secretary sits at the entrance way and then there's a partition and behind the partition there are approximately thirteen or fourteen desks where the detective sit and work from.

I do remember that at that particular time we were off in a corner talking because my desk was located in a corner at that time.

Q Was there anyone else close by?

A Not that I can remember other than possibly the secretary.

Q How close would she have been away if she had been [14] there?

A Behind the partition, maybe twelve feet.

Q Were you typing or anything during the course of his discussions with you, or taking notes, to the best of your recollection?

A I don't believe that I took any notes because I had no need to really. I just wanted, you know, to verify the owner. I had the listing. That was specifically it.

Q That was in the middle of winter in December, is that right?

A I would presume in December.

Q Somewhere in December. After your interview was completed with Mr. Washington, what did he then do?

A He left.

Q And you didn't stop him or in any way inconvenience him from leaving or stand in the way of his going?

A No, sir.

MR. BEIZER: May I have the Court's indulgence, please?

THE COURT: Yes.

MR. BEIZER: No further questions, Your Honor.

THE COURT: When he said that he didn't want to press charges, is that what you said he said, that he didn't want to press charges because they were friends of his?

THE WITNESS: Yes, sir.

[15] THE COURT: And he gave permission, he said he gave permission?

THE WITNESS: Yes, sir. I asked him about, you know, why if he knew that they had the vehicle. Actually, they were standard questions that you ask of any complainant who is either missing, has lost, or is wanting to report the vehicle stolen.

THE COURT: Well, but when he tells you, "I lent them the truck," then there are no charges to press about the truck, are there?

THE WITNESS: No, sir.

THE COURT: And that's what he told you, he said, "I lent the two men the truck?"

THE WITNESS: Yes, sir.

THE COURT: "And I don't want to prosecute them because there's no way you can do that because I gave them permission to have the truck," is that what he said?

THE WITNESS: I don't recall specifically what he told me but his response was something to the effect that he had, you know, he gave me the opinion that he had no occasion to press charges since he did give permission and they were friends of his.

THE COURT: And he told you that the way that motorcycle got in the truck was that he had picked up a hippy who had this motorcycle?

THE WITNESS: Well, a hippy-type person. By that [16] I mean by dress and that the motorcycle apparently had broken down and he picked him up on, I can't recall, it was either Pennsylvania Avenue or K Street.

THE COURT: What was the motorcycle still doing in his truck? Where was the hippie, did you ask him.

THE WITNESS: Well, he stated that he was transporting him some place and that the truck had broken down and he left the hippie and the motorcycle at some location, and I don't recall the location where the truck broke down and where he left him, he left the truck and the hippie there and he left and I thought that was kind of odd, but that was approximately what he said to me.

MR. BEIZER: Your Honor, might I inquire?

THE COURT: Not yet.

MR. BEIZER: This is in regard to the questions that you have asked.

THE COURT: Not yet.

MR. BEIZER: I'm sorry.

THE COURT: After he told you that the truck broke down and he left the motorcycle and the hippie there, did you ask him how come his two friends got to be driving the truck after that?

THE WITNESS: I believe I might have mentioned something about, and again, this is strictly from memory, I might have mentioned something about it.

[17] THE COURT: Well, maybe you'd better take ten minutes for you to look at your notes.

THE WITNESS: All right.

THE DEPUTY CLERK: All rise. By order this Honorable Court stands recessed for ten minutes.

(Recess taken.)

* * * *

THE COURT: Do you have any more questions of the officer?

MR. BEIZER: I would like to ask him one question, Your Honor.

THE COURT: All right.

BY MR. BEIZER:

Q After Mr. Washington told you that he was not going to press charges and told you the story of the sequence of events of picking up the hippy-type fellow with the motorcycle, did he tell you anything further at that point?

A No, sir, not that I can remember.

Q And did your conversation end at that point or shortly thereafter?

[18] A Shortly after, yes.

Q And you in no way intended to arrest him or anything at that point?

A No, sir.

Q And when was the next time that you saw Mr. Washington?

A Today.

Q Today was the next time that you saw him?

A Yes.

Q You didn't see him at any time in between that meeting in December and today?

A No, sir.

MR. BEIZER: I have nothing further, Your Honor.

THE COURT: All right.

[CROSS EXAMINATION OF RALPH L. SNOOTS]

BY MR. CHERRIN:

Q How long have you been on the police force?

A I'm starting my fifth year.

Q How about with the Auto Squad?

A Going on two and a half years.

Q Two and a half years?

A Yes.

Q Before Mr. Washington was brought into your office, before he came to your office, had you had any knowledge of the statements that the other two gentlemen had made?

[19] A As I previously stated, if they made statements, they might have made them either before or after I was there, but they refused any statements to me whatsoever.

Q Did you talk to Officer DuRant before you talked to Mr. Washington?

A Before I talked to Mr. Washington?

Q Before you talked to Mr. Washington, did you talk to Officer DuRant about this case?

A Yes, I had to.

Q Did he tell you that they made any statements to him?

A I don't recall whether or not he mentioned it, whether they did or didn't. I don't know.

Q It is your testimony that you did not know when Mr. Washington came into your office that the two gentlemen who had been arrested had told Officer DuRant that Mr. Washington was their friend and they had permission to use the truck?

A I understand that Officer DuRant may have told me. I don't remember him talking me but he may have.

Q It is a possibility?

A Yes, sir, it's a possibility.

THE COURT: Anything is possible, Mr. Cherrin.

BY MR. CHERRIN:

Q You did talk to Officer DuRant to some extent about [20] this case?

A Yes, sir. I had to in order to ascertain the facts and, of course, we in the Detective Division try to assist the uniformed personnel in advising them of the proper charge and whatnot like this and, of course, I did discuss the case with him in order to determine what he had.

Q This was after. All right. When Mr. Washington first came into your office, and I'm going to ask you to sort of repeat what you said before but in a little more detail, when Mr. Washington first came into your office, what was the first thing you said to him, do you remember?

A I believe he came into the office and the secretary, I was at my desk, and the secretary told me that he was there and I went out and introduced myself and he introduced himself and we did casually sit down and started talking.

Q You told him that you were with the Auto Squad?

A Yes. I'm sure that he knew that he was in the Auto Squad. Of course, I left word when I went to the home that I was with the Auto Squad and, of course, there's a big sign that says, "Auto Squad", when you walk in.

Q Did you advise him of his rights at that time?

A No, sir.

Q Did you advise him of his rights at any time that day?

A No, sir.

[21] THE COURT: Mr. Cherrin, why?

MR. CHERRIN: Your Honor, I just want to make sure for the record whether he did or did not.

THE COURT: Well, it's a quarter of four and it's getting late in the day and this Court and the staff here haven't had any lunch today. We started at about quarter of nine this morning. So insofar as you are able to, please let's stay with relevant questions.

It is clear from the officer's testimony that anything said was non-custodial dialogue.

MR. CHERRIN: I won't burden the Court. I just wanted to establish it for the record. I apologize to the Court.

THE COURT: All right.

BY MR. CHERRIN:

Q All right. Then you told him, did you not, that his car, that his van had been picked up, is that right?

A Well, I first asked him about whether or not he owned the van and ascertained if he was who he said he was and I wanted to see some registration.

Q Now after he produced the registration and you were satisfied that it was his van, didn't you ask him whether he wanted to be the complaining witness in the case or whether he wanted to file a complaint, isn't that correct?

A I explained to him that these gentlemen had been [22] picked up in a truck and then I asked him whether or not, or questioned him to the fact whether or not he wanted to be a complainant, yes, sir.

Q And at that point he said no, that they were his friends, is that right?

A Yes, sir, I believe that that was his response.

Q Now can you tell us why you asked him more questions at that point?

MR. BEIZER: Your Honor, I'm not sure that he asked him any more questions.

MR. CHERRIN: I think from his testimony, Your Honor, he did go into the story—of course, I may be wrong as to the chronology.

THE COURT: What difference does it make as to why he asked him more questions? If you want to ask him if he did ask him more questions and what they were, go ahead and ask him. Why he asked them is totally immaterial.

BY MR. CHERRIN:

Q Did you ask him any more questions after he said he didn't want to be a complainant?

A I'm certain that I did. What the questions were I don't know because if I remember correctly, Mr. Washington sort of volunteered the story to me.

Q Now can you point out in that story—you testified that you thought the story was odd, is that correct?

[23] A That's correct.

Q You didn't believe the story, did you?

A After he had told me about the fact of him picking up this complainant and identifying the complainant and the motorcycle, yes, I thought that it was odd, yes, I did.

Q Did you tell him that you suspected that he was part of this deal?

A I believe the words were that I told him that I didn't believe his story and asked him if that was the truth and I believe that he responded that it was and I said, "Well, you shouldn't—I wouldn't go to court and testify to that fact because you're liable to be in trouble if you did."

Q You told him that?

A Yes.

Q All right. Now after he left, did you report this to somebody else—

A No, sir.

Q —this story? Do you know how it came about that he was subpoenaed to testify before the Grand Jury?

A I do not, sir.

Q You have no idea?

A No. As I stated to the State's Attorney, when he left my office, that was it. The only thing that I had in my mind and intention was to prove ownership and whether or not an additional crime had been committed by either, you know, [24] the two defendants that had been arrested and when he left my office that was the last time I seen him until today.

Q Well, did you proceed at all any further with the investigation of Mr. Washington?

A No, sir. I had no reason to.

Q The usual procedure, I believe you indicated, was to paper with regard to the other two, is that correct, as far as you knew?

A That is correct.

Q And you were in charge of that papering, is that correct?

A No, sir. Officer DuRant handled the case. As I also stated, I'm just, we're merely advisors as to the charges and assistants. In this particular case, my assistance was to find out who owned the vehicle, whether or not it had been reported stolen and, you know, whether or not he wanted to complain.

Q Who was in charge of the case?

A Officer DuRant.

Q Did you report to Officer DuRant the conversation that you had with Mr. Washington?

A I believe Officer DuRant called me the next evening and asked me whether or not I had gotten a hold of the owner of the truck and I stated that I had and that the man had shown me proof of ownership.

[25] Q Did you tell him the story that Mr. Washington had told you?

A I don't remember if I did or not. As a matter of fact, I don't even remember the officer calling but I'm sure he did because I don't think he knew Mr. Washington's address or name and I gave it to him.

Q Do you remember telling anybody Mr. Washington's version?

A No, sir, other than—I'm sure I told the officer. I just don't know at what point.

Q So after that, as far as you know, you did not work on the case?

A No, sir.

MR. CHERRIN: I have nothing further, Your Honor.

MR. BEIZER: One question by way of redirect.

[REDIRECT EXAMINATION OF RALPH L. SNOOTS]

BY MR. BEIZER:

Q Officer, was Mr. Washington's truck impounded as the result of the events on December 3rd, that is, the motorcycle being inside, if you know?

A If I remember correctly, the truck was seized as evidence.

Q It was seized as evidence. And you did not give it back to him, give him the property, when you saw him on this next day or the day after, is that correct?

[26] A No, sir. I had nothing to do with the impoundment of the truck. It was Officer DuRant's case.

MR. BEIZER: Thank you very much.

THE COURT: All right. Step down, sir. You are excused if you would like to be.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

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[DIRECT EXAMINATION OF RALPH DURANT]

BY MR. CHERRIN:

[27] Q Will you state your name for the record, please, Officer?

A Officer Ralph DuRant, assigned to the Second District Headquarters.

Q I call your attention to December 3rd, 1972. Where were you assigned at that time?

A We were assigned at 2D1, Scout 78.

Q And did you make an arrest on that night of a Samuel Zimmerman and Ruben Woodard?

A Yes, I did.

Q Will you tell us the facts of that arrest?

A Yes, sir. I observed a white van truck parked in the 3000 Block of K Street. It had two subjects standing in front and as we passed the vehicle the subjects got into the van and made a U-turn and went up 31st Street in the 1000 Block and so I likewise made a U-turn and stopped the subjects for questioning at which time I noticed a motorcycle laying [28] in the back of the truck and I got a check on it and found out that it was stolen. It had been stolen forty-seven minutes earlier. That's when the lookout came. So they were subsequently arrested and transported to 2D1 by Wagon 21 and they were advised of their rights on the scene and at the station.

Q Now when you stopped them, did you ask them, these two gentlemen, about the motorcycle?

A Yes, sir. I asked Mr. Zimmerman.

MR. BEIZER: Your Honor, I suggest that any further inquiry as to what happened to the other two gentlemen has no relevance with respect to whether any statements were taken by Officer DuRant from Mr. Washington.

THE COURT: Answer the question.

BY MR. CHERRIN:

Q Thank you. Did they make any statements as to the motorcycle?

A Yes, sir.

Q What were those?

A Mr. Zimmerman said that he thought it belonged to Mr. Washington.

Q He gave you the name of Washington?

A He said the owner of the truck.

Q And he said that he believed that that motorcycle was owned by Mr. Washington?

A Right. The owner of the truck is what he said. He [29] didn't say Mr. Washington.

Q Were there any other statements made to you about the motorcycle or the van?

A Not at that time.

Q Well, at a later time were there any statements made to you?

A At the station I found out who the truck was registered to, and I tried to get in touch with him and failed to do so. He wasn't at home.

Q Well, did Mr. Woodard or Mr. Zimmerman make any statements?

A Mr. Zimmerman said that Mr. Washington had called him and told him to come pick up his truck, that it had broken down somewhere, I believe he said, at 29th and K somewhere around there.

Q When did he make that statement?

A While I was processing the papers.

Q Now at a later time I believe you had a conversation with Officer Snoots?

A Snoots.

Q Right.

A The same night I talked to Officer Snoots, right.

Q Did you tell Officer Snoots what statements Mr. Zimmerman or Mr. Woodard made?

A They were on the scene at the time as I was doing [30] the processing.

Q Officer Snoots was there?

A Yes, sir. Not for the entire period but for enough time to get the information as to the gentlemen's identity.

Q Were you present at the station when Mr. Washington came down to talk to Officer Snoots?

A No, sir, he didn't talk to him at 2D1. I believe he talked to him down at headquarters.

Q And you were not present?

A No, sir.

Q Did there come a time when Officer Snoots informed you of the conversation he had with Mr. Washington?

A I believe several days later I called. I'm not too sure if I called him or he called me and I'm not too sure of what he said at this time.

Q Well, did what he said to you lead you to have Mr. Washington subpoenaed for the Grand Jury?

A No, sir. I didn't have him subpoenaed. The U. S. Attorney had him subpoenaed.

Q Do you have any knowledge of why the U. S. Attorney had him subpoenaed?

A I believe it was to give a statement about his truck at the time.

Q Did he give the U. S. Attorney any information about the case?

[31] A When I went down to the Grand Jury to process Mr. Zimmerman and Mr. Woodard, I told them who the owner of the truck was and it was on the statement as to what they said about the truck and everything and that was it.

Q Were you aware at that time of the statements that Mr. Washington had made?

A No, sir, not at that time.

MR. CHERRIN: I have no further questions.

THE COURT: Any questions?

MR. BEIZER: I have no questions, Your Honor.

THE COURT: All right. You may step down, Officer. Thank you. You may be excused.

(Witness excused.)

THE COURT: Mr. Cherrin, what have you got to say, sir?

MR. CHERRIN: Pardon?

THE COURT: I say, what have you got to say? What statement is it, or are there, that you desire to have suppressed?

MR. CHERRIN: Well, Your Honor, the statement said at or that Mr. Washington made at the police station to Officer Snoots.

THE COURT: Are you going to put him on the witness stand?

MR. CHERRIN: No, sir, not at this time. There was [32] no arrest made at this time though I think it is clear from what the officer said that there were some suspicions about Mr.—

THE COURT: He told him after he heard his story about picking up a hippie-type individual and putting a motorcycle in his truck, he said, "I don't believe that story and all you're going to do is to get into trouble if you go down to court and tell that to anybody," and then he said after that he didn't do a thing and had nothing to do with this case thereafter and hasn't seen the man until today.

MR. CHERRIN: I understand that, Your Honor. That is his testimony. First of all, Officer DuRant testified that on the night of the arrest of the other two gentlemen, Mr. Woodard and Mr. Zimmerman, that they made a statement to the police saying—

THE COURT: Made a statement to him.

MR. CHERRIN: Right, made a statement to him.

THE COURT: Yes, to him, Officer DuRant.

MR. CHERRIN: Yes, to Officer DuRant and I asked him, and I think his answer was, that Officer Snoots was there,—

THE COURT: He said he was there part of the time.

MR. CHERRIN: Right. And that was in answer to my question whether he told Officer Snoots the statement and I inferred that Officer Snoots was aware of that statement [33] and that at that time Mr. Washington was under some suspicion. Now the police may not have had probable cause at that time to make an arrest.

THE COURT: When he became under suspicion, if it's appropriate to say that Officer Snoots suspected him of anything, and quite clearly he only talked to Officer Snoots, he didn't talk to Officer DuRant and you're not seeking to suppress anything he said to Officer DuRant but you're seeking to suppress whatever he might have said to Officer Snoots, and as soon as he said it to Officer Snoots, Officer Snoots said that a statement like that "is just going to get you in trouble and I wouldn't go around, go down to Court and tell the people about it," and with that, the conversation ended and your client went his way and the officer went his way and nothing else was ever done.

MR. CHERRIN: Well, Your Honor, something else was done. He was subpoenaed to come down to the Grand Jury.

THE COURT: Not by Officer Snoots. Just a minute, Mr. Cherrin, as I keep saying, it's getting late. I'm trying to point out to you that you're saying, and you agree that it was not custodial interrogation, and if you agree with me that he was not a suspect, if you want to call him a suspect, until such time as the officer said to him, "I don't believe that story and you'd better not go around telling anybody about it because it's going to get you in trouble," [34] after that, nothing more was said, and so if he were a suspect at that time and you choose to call him as a suspect at that time, he was not thereafter questioned by Officer Snoots. Let's move on. Your motion to suppress the statements that he made

to the police for whatever inculpatory merits there may be to them, and I'm not sure that there is, that motion is denied.

MR. BEIZER: May we proceed, Your Honor, by calling Mr. Richard Stuckey.

THE COURT: You call whoever you wish.

MR. BEIZER: I would like to call Richard Stuckey.

* * * *

[DIRECT EXAMINATION OF RICHARD STUCKEY]

BY MR. BEIZER:

Q Mr. Stuckey, in a loud clear voice, will you state your full name, please?

A Richard N. Stuckey, S-t-u-c-k-e-y, Assistant United States Attorney, Office of the United States Attorney, Washington, D. C.

Q Which division of that office do you work in at present?

[35] A The Grand Jury Intake Section. Specifically, I'm assigned to the operation of the Grand Juries in the Superior Court.

Q Will you take a look around the courtroom now and see if you can identify anyone you have seen prior to today in the court with the exception of His Honor and the people in back of you?

THE COURT: With the exception of everybody but the defendant.

MR. BEIZER: Yes, Your Honor. Briefly, that is what I'm asking him. Mr. Stuckey, have you seen the defendant before?

THE WITNESS: Well, I know that I have by virtue of the names in the case. I don't really recognize the gentleman although he is about the same size and appears to be a person who came to me one morning or at noon as I remember it in the office of the Grand Jury in the basement of this building, however, I cannot say, because it has been sometime, that I do actually recognize him.

I do know that he is the defendant in this case and through examining the records realize that he is the person who came to me on this date and to whom I gave a subpoena after a certain conversation.

BY MR. BEIZER:

Q Do you remember what date that was?

[36] A No, I don't. I have looked at the records and the jacket and my recollection is sometime between November and March but I don't remember the day.

Q Did you have any conversations with anyone concerning Mr. Washington prior to his coming down and you seeing him in the Grand Jury room?

A Is that the defendant's name, Mr. Washington?

Q Yes, Mr. Washington is his name and that is the defendant.

A I'm sorry. What was your question?

Q Did you have any contact with him or hear anything about him prior to his coming to the Grand Jury the day that you saw him?

A No. He came to our office and I believe our receptionist brought him to my attention. He had a request for the return of a vehicle. I didn't know about the case, didn't know anything about the case, and I remember that I had to talk to him for a brief moment to find out what the case was about. I find out the name of the person arrested and I believe right at that moment I went and retrieved the jacket from our card file which would indicate on what date the case was set for the Grand Jury hearing, pulled the jacket out, and then looked over the jacket and discussed with him his problem.

Q What was the problem?

A He wanted his vehicle back. The vehicle had [37] apparently been impounded or kept by the police after it was found, it being some sort of a van truck, I believe, with a stolen motorcycle in it or close to it or something, and two things dawned on me as I looked at the case, one, probably or apparently the vehicle was not needed as evidence and we wouldn't have any real right to not say to him and give him a piece of paper form

which says, "This vehicle may be released and is not needed by the U. S. Attorney's Office for evidentiary purposes," which form goes to the property clerk, and, secondly, it dawned on me that he would be a witness or should be a witness in the case against—at that time I forget who it was against but he had had some contact with persons, to my recollection there were two people, who had been arrested.

Q Did you serve him with a subpoena at that point?

A I remember serving him with a subpoena. What I independently try to recall is that I couldn't recall that I had served him with a subpoena and gave him the property release. It was my recollection that I had served him with a subpoena and denied him a property release stating that we had to wait until the date when the case came before the Grand Jury and when all parties were there and when an Assistant could sit and go over all the facts to see if the vehicle could be removed, but I note an entry which I had made on the jacket at that time that apparently I did give him the vehicle back, and from that I would know now that I decided that the vehicle [38] was not needed for evidentiary purposes and that he need it. I remember that.

Q Did he explain to you what the circumstances were regarding that vehicle on that evening that it was seized?

A Yes. I asked him some questions and he gave me an explanation.

Q And at that point you served him with a subpoena, is that correct, or shortly after that you served him with a subpoena?

A I did. I think I might have even told him, of course, that he would be needed as a witness and I would give him a subpoena. I had some doubt in my mind about whether he would return voluntarily I remember and so I wanted to serve him with a subpoena.

I think I also told him that it would be necessary, not that it would be necessary, but that when he came that he would be entitled to a \$20.00 witness fee but, of course, this is supposed to be prefaced with the service of a subpoena so that the man—right and proper I gave him a subpoena—but I wanted him back on the day it

was set for the Grand Jury proceeding. I did not have time to go into all of it at that time. Of course, the police officer wasn't there and the other witnesses weren't there.

Q After he related to you the circumstances of how his truck came to be impounded, did you question him any [39] further about that at that time, if you can recall?

A He told me the circumstances under which his truck got impounded. I think that was evidenced from the jacket. Yes, I did question him generally about the whole matter but it was difficult.

I remember I was rushed and it was difficult for me to see exactly what was up as far as the case was concerned.

Q Can you tell His Honor what your purpose was in serving him with a subpoena?

A To have him there as a witness so that we could resolve the whole matter. I could see that it was a circumstantial case in some aspects and there was some problem with the people charged or getting an indictment and successfully prosecuting them if they were the guilty parties because the motorcycle, if that's what it was, apparently was in this man's van.

MR BEIZER: I have no further questions, Your Honor.

THE COURT: Well, I have a question.

You served him a subpoena the day that he came to talk to you to come back another day to testify before the Grand Jury?

THE WITNESS: Yes, the day, Your Honor, for which the case was scheduled for Grand Jury presentation as I recall.

THE COURT: All right. Now if you will just step [40] down from the stand, we will take the verdict in another case.

(Whereupon the witness stepped down from the stand and the Court heard another matter totally unrelated to the case at Bar, after which the witness resumed the stand and testified further as follows.)

MR. BEIZER: I have no further questions, Your Honor.

MR. CHERRIN: I have a few questions.

THE COURT: All right.

[CROSS EXAMINATION OF RICHARD STUCKEY]

BY MR. CHERRIN:

Q Do you remember exactly what Mr. Washington said to you?

A No, sir, not exactly.

Q Did you remember that you had some doubts about the story?

THE COURT: Why don't you ask him, did he have any doubts about his story.

MR. CHERRIN: I thought I did, Your Honor.

THE WITNESS: I can remember. Yes, I did.

BY MR. CHERRIN:

Q Do you remember what those doubts were?

A Essentially, I can't be specific, but essentially, and I think I might have voiced these to him at the time that it didn't make sense. I think he stopped to pick up the [41] people who had the motorcycle according to him who had some problem with the motorcycle, put the motorcycle in his van and then his van had some trouble and he left his van to go to a gas station or repair shop to get help but left his van completely in the custody of these two people whom he hadn't even known before whose motorcycle was in the back.

It was truly a Good Samaritan act on his part and an indication of great faith in human nature if it were accurate, but it didn't seem to me that it would be, and so that is what raised the doubts.

Q Did you confront him with those doubts?

A I think I did. I think I said, "Now, is that true?" or "Could that be right?" or "Why did you leave?" or ask some questions of that nature but I didn't push it to a final answer. I didn't have time for it, I remember.

Q In any event, you decided that you still had doubts, is that right?

A That would be accurate, yes.

Q You also said that you had doubts about his returning voluntarily. What was the basis for those doubts?

A Well, it seemed to me that—I can't remember now—but in putting it together I can see that I did give him the property release. He had his vehicle back. He didn't have any particular reason to come and testify if these people were friends of his and he wasn't telling me about it that he had [42] stopped or if he made friends with them and stopped, why would he want to come back and testify against them in essence. We have that great running problem with witnesses who do not wish to testify against people that they have become associated with.

In addition, if there was something that he wasn't telling me, of course, he didn't want to come back and would not theoretically want to come back and get in the middle of that tightening noose of evidence which would come from other witnesses and the police officers.

Q Was the basis of your doubts that you had with his story why you issued the subpoena for him?

A I would say that would be an accurate statement of my motivation in giving him a subpoena as opposed to just saying, "Okeh, now look, my man, I'm going to take your word if you'll be back on such and such a date, all right," and try to establish a little rapport with him and get his assurance that he would voluntarily return.

I would say that your question accurately stated my motivation.

Q One other question. You, I gather, question people before the Grand Jury, is that not correct?

A Yes.

Q And do you normally give the Grand Jury witnesses any type of warning?

[43] THE COURT: I'll sustain the objection to what normally happens. I'm only concerned with what happened here, Mr. Cherrin.

MR. CHERRIN: Well, I think it's relevant.

THE COURT: I sustained the objection. Ask your next question.

MR. CHERRIN: I have no further questions, Your Honor.

THE COURT: Anything further?

MR. BEIZER: Nothing by way of redirect.

THE COURT: Thank you very much.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

* * * *

[DIRECT EXAMINATION OF RICHARD SHINE]

BY MR. BEIZER:

Q Will you tell His Honor in a loud and clear voice your full name and occupation?

[44] A My name is Richard Shine, S-h-i-n-e. I'm an Assistant United States Attorney.

Q Where are you assigned in the United States Attorney's Office? I take it that would be in the Washington United States Attorney's Office?

A Yes, in the District of Columbia. At the present time I'm assigned to the Grand Jury Section of that office.

Q In the Superior Court?

A That is correct.

Q Were you assigned there on February 5, 1973?

A That's correct.

Q On that day, do you remember seeing Mr. Gregory V. Washington that is seated here in the courtroom to the left of Mr. Cherrin, the man with the beard?

A I did see a gentleman, Gregory V. Washington. I think that's Mr. Washington. I can't positively identify him.

Q What was your contact with Mr. Washington at that time on that day? Had you seen him before?

A Before that day?

Q Yes.

A I don't believe so.

Q What was your contact with him on that day?

A He came in pursuant to a subpoena that I had signed and testified in front of the Grand Jury that day.

[45] Q Did you have any conversation with him prior to him going before the Grand Jury, to the best of your recollection?

A Are you referring to the warning of his rights? Is that what you're referring to?

Q I just asked you if you had any conversation with him?

THE COURT: More specifically with respect to warning him of his rights, yes.

Before he went into the Grand Jury, did you inform him of his rights and get a written waiver from him, a written waiver of Fifth Amendment rights?

THE WITNESS: Prior to going to the Grand Jury?

THE COURT: Yes.

THE WITNESS: I did not get a written waiver. I'm fairly sure of that.

Judge, I don't have an independent recollection of whether I first had Mr. Washington in my office and warned him of his rights that he waived and then I brought him down to the Grand Jury. I would say this though. I spoke to Officer DuRant and his recollection is that it was only after we were down in the sub-basement where the Grand Jury rooms themselves are and while he was sitting outside the Grand Jury rooms themselves that I asked him for a warning-of-the-rights card.

[46] Now from that I would infer that since I did not have a card when we were down, or already have a card when we were outside the Grand Jury rooms themselves, I would infer from what Officer DuRant recalled that I probably did not warn him of his rights in my office and that the first time that I warned him of his rights was in the Grand Jury room itself and on the record.

BY MR. BEIZER:

Q Do you remember the substance, if at all, of the conversation that you had with Mr. Washington in your office?

A No. I think if that is what happened, if I only warned him of his rights for the first time in the Grand Jury, what I would have done is picked up our jacket and in the jacket there was a Grand Jury summary that the secretary had already typed and I would have read that to get some idea of what Mr. Washington's story was and then just put him in the Grand Jury without having any lengthy conversation with him, or if any conversation at all.

Q Now, did there come a time when you actually did put him before the Grand Jury?

A Yes, indeed.

Q And did you advise him of his rights there?

A Yes, I did, and we did that on the record and it was in the Grand Jury that I gave him the PD 47, the warning-of-the-rights card, and he executed the waiver after I warned [47] him orally of his rights. He executed the waiver on the back of the PD 47.

MR. BEIZER: Your Honor, could I have Exhibit No. 1 to refresh Mr. Shine's recollection of what was stated as part of the record since that is sworn testimony and let's take that as part of the record as to what actually Mr. Shine said when he warned him of his rights?

THE COURT: Do you have any doubt about this being the actual transcript?

MR. CHERRIN: No, I don't, Your Honor.

THE COURT: All right. The Grand Jury testimony insofar as the warning of his rights is concerned will be received into evidence.

(Whereupon the Grand Jury transcript was marked Government's Exhibit No. 1 and received in evidence.)

MR. BEIZER: I would also like to have this marked as Government's Exhibit No. 2, if I could, just for the purposes of this motion.

THE COURT: It will be so marked.

(Whereupon a Police Department Form 47 was marked for identification as Government's Exhibit No. 2.)

[48] BY MR. BEIZER:

Q Mr. Shine, I show you what has been marked as Government's Exhibit No. 2 and ask you if you can identify it?

A Yes. I believe this is the card, in fact, I'm fairly sure that this is the card that in the Grand Jury I had Mr. Washington read the questions and fill in the answers. This is in his handwriting and he signed, Gregory Washington. He dated it, I think he dated it, and the signature as a witness is the Court Reporter whom I had, the Court Reporter in the Grand Jury, Katherine Mooney, whom I had witness this.

Q Were you present when that happened?

A Yes. I handed him the card while he was sitting in the witness stand.

Q And did you see Mr. Washington make these responses and see Mrs. Mooney sign as well?

A Yes. I believe that I briefly read part of the transcript of the Grand Jury testimony and I believe there is some discussion on the record which indicates the process of his executing the waiver of the rights card.

Q Thereafter after advising Mr. Washington of his rights, did you prior to that time find out how old he was? Did you have any suggestion of how old he was?

A Unless it was some place in the DA's jacket I have no independent recollection of asking him how old he was. He appeared to me to be an adult.

[49] Q Did he appear to answer your questions, the questions that you put to him, was he responsive to those questions?

A You mean as to the warning of his rights?

Q As to the warning of his rights?

A Yes.

Q And you perceived no difficulty in him in that he had not understood you in any way when you were advising him of his rights, is that correct?

A No. I thought and my impression was that he very clearly understood what I was saying and indeed I asked him, "Do you understand?" and he said, "Yes."

Q After that, did you proceed to question him about the incident involving the truck and motorcycle?

A Yes. After he had waived his rights on the record and then signed a written waiver on back of the PD 47 I then proceeded to ask him about the circumstances of how his truck got involved, you know, with a stolen motorcycle.

Q Other than Grand Jury members, yourself, Mr. Washington, and the Court Reporter, was there anyone else in the Grand Jury at the time?

THE COURT: Twenty-three people with the exception of those that might be absent.

THE WITNESS: I think the question was, other than the Grand Jury. No, there was no one other than the Grand Jury, the Court Reporter, myself and the witness present which [50] is, as you know, required by law.

BY MR. BEIZER:

Q Did Mr. Washington continue to answer your questions throughout the course of the examination or did he at any time indicate a reluctance to answer these questions.

A He at no time indicated any reluctance whatsoever.

Q And did he respond to your questions in a responsive manner and did he appear to have understood what you were asking him?

A Yes, and the questions of the Grand Jurors as well.

Q And he did not appear to have any difficulty in comprehending them?

A None whatsoever.

Q After the time he finished his testimony, what happened?

A I asked him to step outside. After the conversation I had with the Grand Jury I stepped outside the Grand Jury room and excused him.

Q You had no further conversation with him after those proceedings?

A No. I have not seen him since then, seen him since that occasion. I have not.

MR. BEIZER: I have no further questions, Your Honor.

THE COURT: Mr. Cherrin.

[51] MR. CHERRIN: May we approach the Bench for a second, Your Honor?

THE COURT: There is no jury here. Must you come to the Bench?

MR. CHERRIN: Well, I want to ask a question which I asked before on which the Court sustained or held that—

THE COURT: Come to the Bench.

(Whereupon counsel for the Government and counsel for the Defendant approached the Court at the Bench at which time the following colloquy was held in a low tone of voice.)

MR. CHERRIN: I just want to ask the question as to what the usual procedure is. I think it is relevant to show that they did consider Mr. Washington a suspect, Your Honor.

THE COURT: What difference does it make? I'm only concerned about what the law is and what they did with this man. Now what they do in ninety-nine other cases—

MR. CHERRIN: I think it is relevant to show that he was a suspect—

THE COURT: Mr. Cherrin, you have a happy facility of talking when I'm talking.

MR. CHERRIN: I'm sorry, Your Honor.

THE COURT: Again, I'm only concerned with this case. What they did in ninety-nine other cases, or a hundred and ninety-nine other cases, seems to me to be totally [52] immaterial.

I'm concerned, Number One, what is the law, is PD 47 sufficient for a lawyer in the Grand Jury, and alternatively if it is not, what more is required, and what the United States Attorney's policy is or might be is not material or relevant so far as I can see.

MR. CHERRIN: I won't quibble with the Court. I only offer that to show that you may indeed consider Mr. Washington a suspect in this case.

THE COURT: You can bring that out in testimony that he was.

MR. CHERRIN: In some other cases they may not advise a person of their rights but in this case they did and I think that that is an indication that he was a suspect.

THE COURT: Well, you can ask him this whether it's the practice to warn all witnesses or people who may be involved.

MR. CHERRIN: That's all I want to ask him.

THE COURT: You can ask him that. All right.

MR. CHERRIN: Thank you, Your Honor.

(Whereupon both counsel resumed their places at the counsel table, after which the following occurred.)

[CROSS EXAMINATION OF RICHARD SHINE]

BY MR. CHERRIN:

Q Mr. Shine, were you aware of any statements that [53] Mr. Washington had made to either members of the Metropolitan Police Department or other members of your office before he was brought in?

A I believe I was, that is, the notes on the back of the DA's jacket were made by, I believe, Mr. Stuckey.

Q Is that your own only knowledge of any prior statement? Did Officer DuRant tell you anything as to what Mr. Washington might have said?

A I honestly do not have any independent recollection of whether he did or not.

Q But you do remember looking at the DA's jacket?

A Yes, I would have looked at the notes on the back of the DA's jacket.

Q Now I believe Exhibit No. 1 is the first full three pages of his Grand Jury testimony and in which you advised Mr. Washington of certain rights.

Is there any other time that you advised him of any rights?

A I don't understand what you mean. You mean while I was in the Grand Jury room?

Q Right.

A No. Everything—whenever a witness is in the Grand Jury room we are always on the record and I never go out the record, so that transcript would accurately reflect the extent of my warning him of his rights in the Grand Jury room.

[54] Q Very well. The usual practice is to advise a person of his rights whenever he testifies in front of the Grand Jury?

A You mean any witness who comes in?

Q Any witness?

A No, sir.

Q Will you tell us why you advised Mr. Washington of his rights?

A Because at the time I had read the notes on the back of the jacket as indicated by Mr. Stuckey. I wonder if I might see the notes.

Q I have no objection.

MR. BEIZER: I have no objection, Your Honor.

(Whereupon a document was handed to the witness by Mr. Beizer after which the following occurred.)

BY MR. CHERRIN:

Q Are those the notes that you're referring to?

A Yes. This is on the left side of the back of the DA's jacket which is labeled, Samuel Lee Zimmerman, the case of Samuel Lee Zimmerman, and it's in a column under AUSA notes.

Q So it was then based on your own notes when you advised Mr. Washington of his rights?

A Well, let me explain what I mean. I read those notes and it seemed clear to me that according to Mr. Stuckey's recollection of his conversation with Mr. Washington that [55] Mr. Washington was telling Mr. Stuckey that the two men who were arrested in the truck were not the persons who had the truck when the stolen motorcycle was put into the truck, and at the same time Mr. Washington was in effect saying to Mr. Stuckey, as I interpreted these notes, that Mr. Washington did not know the motorcycle was stolen at all, that is, stolen at the time it was put in his truck either.

If that story were to be believed by the Grand Jury, then he, of course, would be guilty of no offense nor would the two men who were arrested in the truck.

My reaction to that story was that "I'm not sure whether the Grand Jury is going to believe it," and so as a matter of precaution I just thought that I would be overly cautious and warn him of his rights before he testified.

Before I put him in the Grand Jury and was able to in detail question him about the circumstances of how he became in possession of the truck, I did not know whether his was a believable story that he did not know that the motorcycle was stolen and was put in his truck and nor therefore did the two men who were arrested later in possession of this truck and the motorcycle, and so as a matter of precaution and not because I had any belief at that time that he was confessing to any offense, but as a matter of precaution, I decided to warn him of his rights.

Q And so you then envisioned the possibility that the [56] Grand Jury may indict him on this charge, is that right?

A I thought that the Grand Jury might conceivably disbelieve him and decide that when he took, if he admitted that he took possession of the motorcycle while he was in possession of the truck that they could decide to indict him. It would be a matter for the community, that is, the Grand Jury.

Q From the story that you knew or the statement that you knew that he had already made you thought there

was a possibility? If he had given the same statement which he had previously given to Mr. Stuckey, you knew there was a possibility that he could be indicted?

A Yes, of course. That's why I warned him of his rights. What I'm saying to you is that I had not decided, I in my own mind as a prosecutor had not decided, that this man was going to be indicted. He had an explanation about how the motorcycle got into the truck which might result in all three men, himself and the other two men, being ignored by the Grand Jury and the whole matter being closed.

On the other hand, I was interested in presenting the whole matter to the Grand Jury so they could decide whether to ignore all three men or indict the two men who were arrested in possession of the truck or indict Mr. Washington by himself or do what they chose on whatever they decided to believe having heard the testimony of Mr. Washington.

[57] Q Did you have any knowledge of any doubts that Mr. Stuckey may have had as to Mr. Washington's story?

A No. I don't believe I talked to Mr. Stuckey before I put him in.

Q Had you had any doubts before Mr. Washington began his testimony?

A I had no idea, sir. I had not closely questioned the man about his explanation. I didn't know until he started testifying as to what his explanation was going to be.

Q You did talk to him before he went into the Grand Jury room?

A About the substance of what happened?

Q Yes.

A No. I don't believe that I did. That's why I indicated to you if I had talked to him at length in my office about what happened, I would have warned him of his rights in my office but it is my best recollection that I don't have an independent recollection of warning him and I don't think, based upon what Officer DuRant indicated, I don't think I did talk to him in my office.

MR. CHERRIN: I have no further questions.

THE COURT: Why would you have warned him of his rights in your office if you were going to do anything in the Grand Jury room anyway?

THE WITNESS: Well, Your Honor, because, and I [58] think in this case as the Court knows there are a number of cases that we are processing through the Grand Jury every day, but I think what happened, this is my thought-process in this case, was that I just brought him into the Grand Jury and after I brought him in I thought to myself, "Well, maybe as a matter of precaution I had better warn him of his rights."

Ordinarily if a man has come to me and clearly indicated, or I have a clear indication that he is going to admit to me a criminal offense, what I will do first as a matter of routine, is to talk to him in my office and advise him of his rights and if he decides that he is not going to testify, then I don't put him in front of the Grand Jury.

THE COURT: Why don't you wait until you get him in front of the Grand Jury and do that?

THE WITNESS: Well, because as a general rule, in my opinion, it is an improper inference and if a man goes into the Grand Jury and takes the Fifth Amendment in front of the Grand Jury, the Grand Jurors will have a tendency to draw an improper inference from that fact.

THE COURT: So that under the circumstances it ought to be done before it is done in the Grand Jury, is that what you're saying?

THE WITNESS: If I have some reason to believe that the man is in fact going to take his Fifth Amendment right.

THE COURT: Is the fact that you did not understand [59] or you didn't know when you started off and asked him his name and address, and the second question, "Sir, is that an apartment or a house?" and the third question, "Before I ask you any questions. You're here under subpoena, is that correct?" why did you ask him that?

THE WITNESS: To make it clear to protect his rights and clear in the record that he did not voluntarily come in.

THE COURT: And then the next question was, "Before I ask you any questions I have to tell you what your rights are."

THE WITNESS: That is correct.

THE COURT: Now that took all of ten seconds to recognize that you had to tell him of his right.

Now, where did you suddenly gain the knowledge or the understanding that you had to tell him of his rights when you didn't know that you should have told him of his rights before he came in?

In other words you say. "Mr. Doorman, call the next witness," or whoever it is and he goes and brings him in and he is sworn in the Grand Jury room, is that not so?

THE WITNESS: That is correct.

THE COURT: Then you say, "Sit down, sir," and then he sits down and you say, "What's your name and where do you live?" and then he tells you and you say, "Is that an [60] apartment or a house?" and then he tells you, and then you say to him, "Before I ask you any more questions I have got to tell you about your rights."

Now, where did you suddenly get the knowledge and the understanding or what information came to you at that time that was not available to you prior to the time that you brought him into the Grand Jury that made you aware of the fact that you now ought to warn him of his rights?

THE WITNESS: With all deference to the Court, Your Honor, I think you got the sequence of events wrong.

The witness—ordinarily I call the witnesses—I don't have a Sergeant-at-arms call witnesses. I ordinarily call them myself, but what happened is that I opened the door.

I explained to the ladies and gentlemen of the Grand Jury what the case was about. I opened the door and

asked Mr. Washington to step in. Nothing has been said up until this point.

It may well be that in this case it was at that point that I decided that I had better warn him of his rights. I stepped out while he's going into the Grand Jury room to get the card from the officer, go into the Grand Jury room, and then as soon as we start talking—

THE COURT: Why didn't you step him out of the Grand Jury room and warn him of his rights outside before you [61] brought him into the Grand Jury room?

THE WITNESS: Well, because I just didn't think it was necessary, Your Honor. I thought it in terms of that it was on the record, it was going to be on the record, and if the man said nothing, it was going to be on the record, and if the man said nothing, if the man took his Fifth Amendment right, there is no way that the Grand Jury was going to indict him because we couldn't, we had no evidence against him.

THE COURT: Mr. Shine, do you have up in your Grand Jury Section waiver forms that you have people that are questionably suspect and are going to testify before the Grand Jury that you have them execute before you take them into the Grand Juries and keep them as a matter of record?

THE WITNESS: Other than the PD 47?

THE COURT: Do you have such a form,—

THE WITNESS: No, Your Honor.

THE COURT: —a waiver of Fifth Amendment privilege form?

THE WITNESS: No, Your Honor.

THE COURT: You don't have such a form?

THE WITNESS: No, Your Honor. I use the PD 47 supplied by the police officer.

THE COURT: No, I'm not talking about that. The PD 47 is a warning.

THE WITNESS: I see.

THE COURT: And then on the other side is the—

[62] THE WITNESS: The waiver.

THE COURT: The waiver where they sign it.

THE WITNESS: That's the only waiver I use.

THE COURT: And other than that, you don't have any?

THE WITNESS: No. That's the only waiver I use, Your Honor.

THE COURT: All right.

Anything else, Mr. Cherrin?

MR. CHERRIN: I have no further questions.

THE COURT: Do you have any questions?

MR. BEIZER: Nothing further from the Government, Your Honor.

THE COURT: Let me ask you something, Mr. Shine.

The PD 47 is designed for the police officer when he arrests a person on the street, is it not?

THE WITNESS: Yes, I believe that is correct.

THE COURT: And it is designed to satisfy what the Supreme Court of the United States said in *Miranda* that police officers shall from henceforth warn a man that he has got a Fifth Amendment right and that he doesn't have to talk and if he does, he can start, and if he wants to stop, he can, and if he wants a lawyer, he's entitled to a lawyer, and even if he starts talking and then decides he wants a lawyer he can stop and get a lawyer at that time, isn't that so and [63] isn't that what the PD 47 is designed to accommodate?

THE WITNESS: Indeed it is, Your Honor, and when I was in the General Counsel's Office of the Police Department at that time there was no waiver provision on the back and it was through my efforts that we put the waiver provision on the back.

THE COURT: It's seldom used by the Metropolitan Police Department.

THE WITNESS: Well, it's fortunate they haven't destroyed the old one.

THE COURT: Let me ask you this. Do you discern any difference in the law between the requirement what a police officer must say to accommodate Fifth Amendment privileges and what an Assistant United States Attorney, a lawyer should say on Fifth Amendment privileges when he is presenting the case in the Grand Jury and he has got somebody that might be a suspect?

THE WITNESS: No, Your Honor. I think legally the requirement is the same as the warning and waiver of the rights.

THE COURT: Well, let me ask you this. The waiver has to be intelligent, does it not?

THE WITNESS: That is correct.

THE COURT: And if it is not an intelligent waiver, it is not a waiver at all.

[64] THE WITNESS: Yes.

THE COURT: Now, can you read the first, I guess, two pages in which you informed him of his rights and tell me what it is that you said in there that satisfied you that this man made an intelligent waiver under his Fifth Amendment right not to talk before the Grand Jury in which you acknowledge as kind of an intimidating atmosphere that you think it's improper to do it in there because it's coercive?

THE WITNESS: No, I didn't say that, Your Honor.

THE COURT: What is it that you said about doing it in the presence of the Grand Jury? Didn't you say it was coercive?

THE WITNESS: No, I did not.

THE COURT: Well, that it kind of might stigmatize the individual and the Grand Jury might hold it against him if he refuses to waive and then doesn't answer?

THE WITNESS: What I was saying, if Your Honor please, was that in a case in which the Grand Jury has heard evidence against a man, independent of what the man has said, sufficient that they could indict him, it would be improper for me to bring that man, particularly if he is already charged, but that wasn't the case here, but particularly if he was already charged, bring him in front of the Grand Jury and warn him of his rights as we could with any defendant who is charged in this Court and have him take his Fifth [65] Amendment rights in front of the Grand Jury because there would be no purpose in doing that other than having the Grand Jury draw an improper inference from it and not that it is coercive, but that the Grand Jury would improperly infer that if the guy is taking the Fifth he must be guilty, which, as the Court knows, is irrelevant

to the taking of the Fifth. I did not in any way say that I thought it was coercive to have the man come into the Grand Jury and be warned of his rights in front of the Grand Jury.

THE COURT: All right. Answer my other question and examine what you said to him in the Grand Jury before you started questioning him that would lead you to conclude on the basis of what you said resulted in an intelligent waiver of his Fifth Amendment rights before that Grand Jury?

THE WITNESS: I asked him after I read him what his rights were, I asked him on what appears to be line 14, "Now, do you understand those rights, sir? and he said, "Yes, I do," in his answer on line 15.

Then I said in line 16, "And do you want to answer questions of the Grand Jury in reference to a stolen motorcycle that was found in your truck?" and he said, "Yes, sir."

And then I asked him on line 20, "And do you want a lawyer here or outside the Grand Jury room while you answer those questions?" and his answer was, "No, I don't think so."

Then I said, "Okay, sir—" and that's when I had [66] him fill out the rights card on line 23.

THE COURT: Didn't it matter to you how far he went to school?

THE WITNESS: Well, let me—

THE COURT: And I'm talking about you as an attorney instead of running a Grand Jury, does it matter to you in your warning to him of his Fifth Amendment rights in the presence of the Grand Jury, and you are responsible under the law to know that there has been an intelligent waiver of his Fifth Amendment rights, isn't it important to you to know how far he went to school?

THE WITNESS: Not necessarily how far he went to school, his formal education, since I wasn't asking him to read the card. It would be relevant to me if the witness that I brought in, and we regularly bring witnesses in and warn them of their rights, it would certainly be significant to me if by looking at the man,

listening to the man answering the questions, his demeanor, his appearance, and if I didn't think he understood what was happening or if he had a low IQ or didn't understand what was happening, or he looked physically ill, or any slight, the slightest indication that it wasn't voluntary and that he didn't understand what was going on, it certainly would make a difference.

THE COURT: And you just discerned this by looking at him and listening to the way he said yes or no to the [67] questions that you put to him?

THE WITNESS: Just as I can with dozens of witnesses that I put in front of the Grand Jury every day, Your Honor.

THE COURT: Well, that doesn't make it right That's what I am trying to decide here, Mr. Shine, is whether or not as the law requires that the waiver of constitutional rights was an intelligent waiver. The courts have held that there can be no waiver if the defendants do not know their rights and the rule must be to say anything when the record is silent or inconclusive concerning knowledge and basic constitutional protection, especially in criminal cases, should not be suspended by mere inferences from indifferent facts or doubtful presumptions, and what I'm trying to ask you, or what I'm trying to decide for myself is whether or not we brought about a suspension of this man's constitutional rights by inferences that you drew from the way he gave his responses to you to the questions.

THE WITNESS: May I indicate this, Your Honor, by way of example.

I had not too long ago and, in fact, I'm not sure whether it was before or after, a man come into the Grand Jury in a murder case who technically could have been charged with being an accessory after the fact of murder.

I warned him of his rights and when I asked him if he wanted a lawyer he indicated, "Well, I'm not sure [68] whether I should have one or not. What do you think?" at which point I said, "Well, look, if you have any doubt about it, you need a lawyer," and I brought

him up in front of the Chief Judge of this Court and the Chief Judge appointed a lawyer to represent him.

Regularly we have witnesses who are not warned of their rights.

THE COURT: Well, you knew that anything he said was—Number One, you knew that he was a suspect, did you not?

THE WITNESS: Well, it depends on what you mean by suspect. I knew that if the story was believed that he was not chargeable and none of the three men were chargeable. If his story was not believed, then he could be indicted, and in that sense he was a suspect.

I had not in detail questioned him about his story and therefore at that time I didn't know whether he was going to be indicted or not.

THE COURT: And so you didn't tell him then that not only did he have a right not to answer but in addition to that, if he did answer and his answers were incriminatory they could bring about his indictment by the very Grand Jury that you were before and that it could ultimately lead to his prosecution?

THE WITNESS: Did I warn him of whether or not he could be indicted if his story were disbelieved? No, I [69] did not.

THE COURT: All right. Any other questions?

MR. BEIZER: Just one question, Your Honor.

[REDIRECT EXAMINATION OF RICHARD SHINE]

BY MR. BEIZER:

Q Do you remember whether or not you had the jacket in your hand, that is, the DA's jacket, the office file, in your hand when you saw Mr. Washington first in your office when you talked to him briefly there, in other words, whether you had seen Mr. Stuckey's notes or not at that time?

A I'm sure—probably I saw Mr. Stuckey's notes on the day that I issued the subpoena and not on the 5th of February if that was the day that Mr. Washington was in fact there. That's what precipitated me to—I don't know if that's the right word—that is what caused

me to issue the subpoena, and I had the jacket on the day that Mr. Washington was in fact there.

MR. BEIZER: I have no further questions, Your Honor.

THE COURT: All right. Thank you very much, Mr. Shine.

THE WITNESS: May I be excused, Your Honor?

THE COURT: Yes.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

* * * *

[70] THE COURT: I hold that the warning that was given by Mr. Shine to this defendant before the Grand Jury is inadequate, and that as the Supreme Court has said, a heavy burden rests on the Government to demonstrate that a defendant knowingly and intelligently waived his privilege against self-incrimination, and that was in *Miranda v. Arizona* where the Supreme Court first said that.

I hold that whatever validity that the PD Form 47 has insofar as used by the Metropolitan Police officers, the use of which I do not question, and the validity of which I do not question because it is being used by a police officer on the street under circumstances as to which he has made an arrest, and the Supreme Court has there directed that the warning at that time be given, but I hold that something more, I respectfully say, is required of the United States Attorney's Office with respect to people that they view as suspects that they bring before the Grand Jury.

Now what is at least required in my judgment, and I do not find it in this case, was the requirement that inquiry be made of the suspect to determine what his educational background is, and what his formal education is, and whether or not he understands that this is a constitutional privilege and whether he fully understands the consequences of what might result in the event that he does waive his constitutional right and in the event that he does make incriminatory statements, to wit, and more specifically, "that it could result in his

[71]

indictment by this very Grand Jury that you're testifying before and that thereafter you would be required to stand trial in a criminal court on prosecution for a criminal offense and whatever you say here could at that time be used against you," and I find on the basis of this record that there is an absence of any evidence which would satisfy me that the United States Attorney's Office has distinguished from a police officer assured that in this case an intelligent and knowing waiver of Fifth Amendment rights was exercised.

Now, there remains still the question of whether or not I should dismiss the indictment. In the absence of knowing what other testimony there was before the Grand Jury, I can't rule on that.

MR. BEIZER: Your Honor, may I continue this then for the Government to present it?

THE COURT: Well, do you have the Grand Jury transcript?

MR. BEIZER: Yes, I have the entire Grand Jury transcript, Your Honor, and I would submit it to you for your consideration.

THE COURT: All right, you submit it in camera and I'll look at it and I'll rule as to whether or not it should be dismissed.

[72] MR. BEIZER: Your Honor, I would just like to make two statements for the record so that I understand the basis for your ruling.

One, I understand that you have now suppressed for use at trial in Government's case in chief of the statements made by Mr. Washington at the Grand Jury.

THE COURT: At the Grand Jury only.

MR. BEIZER: At the Grand Jury only.

THE COURT: Yes.

MR. BEIZER: And the statements to the police are still permissible?

THE COURT: I deny the motion with respect to the statements that he made to the police.

MR. BEIZER: Secondly, for the record, our position is as is stated in our opposition.

THE COURT: Don't reargue the case, Mr. Beizer. I'm not interested in hearing reargument. If you stated your position I'm sure I heard it. Now, if you got the Grand Jury transcript, if you will hand it to Mr. Malley, I'll examine it and I'll determine whether or not there is sufficient evidence presented to the Grand Jury to sustain the indictment independent of this witness' testimony.

MR. CHERRIN: Your Honor, may I have the opportunity to examine that also?

THE COURT: Not on your life, sir.

[73] MR. CHERRIN: Well, I would object to it being read in camera.

THE COURT: Well, you can raise it in the Court of Appeals.

THE DEPUTY MARSHAL: All rise. By order this Honorable Court stands adjourned until 9:45 Monday morning.

(Whereupon at 5:10 o'clock p.m. the proceedings in the above-entitled cause were concluded.)

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CRIMINAL DIVISION—FELONY BRANCH

Criminal No. 16947-73

UNITED STATES OF AMERICA

vs.

GREGORY V. WASHINGTON

ORDER

This cause came on for hearing before the Court upon defendant's motion to suppress statements made by him to Officer Ralph Snoots of the Metropolitan Police Department, to suppress his testimony given before the Grand Jury on February 5, 1973 and to dismiss the indictment returned against him charging him with the offenses of Grand Larceny and Receiving Stolen Property and upon consideration of the motion, the memoranda and exhibits filed in support thereof and in opposition thereto, and under further consideration of the testimony adduced in open Court and of argument of counsel made in open Court and it appearing to the Court that no reason as a matter of law exists for suppressing the statements made by this defendant to Officer Ralph Snoots of the Metropolitan Police Department; and it further appearing to the Court that the Assistant United States Attorney who conducted the Grand Jury hearing in this case had a special obligation, over and above the mere reading of Police Department Form 57, which was designed to assist police officers pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), to assure that this defendant did not misunderstand the significance of a waiver of his Fifth Amendment right not to incriminate himself before the [2] Grand Jury; and it further appearing to the Court that no counselling respecting surrender of his Fifth Amendment right was provided by the Assistant United States Attorney to this

defendant before entering the Grand Jury room, nor was any other action taken by the Assistant United States Attorney to assure that this defendant, before entering the Grand Jury room, understood and appreciated in the light of his background and educational qualifications the potential impact involved in a waiver of Fifth Amendment rights; and it further appearing to the Court that no evidence has been presented to this Court by the United States to demonstrate that this defendant, after having been subpoenaed to testify before the Grand Jury on February 5, 1973, knowingly and intelligently waived his privilege against self-incrimination; and it further appearing to the Court after an *in camera* reading of the entire testimony heard by the Grand Jury in this cause that, in the absence of this defendant's testimony before the Grand Jury, no competent evidence exists upon which the Grand Jury could rely in properly returning the instant indictment against this defendant, it is by the Court this 5th day of July, 1973,

ORDERED that defendant's motion to suppress statements made by him to Officer Ralph Snoots of the Metropolitan Police Department be and the same hereby is denied; and it is

FURTHER ORDERED that this defendant's motion to suppress the testimony given by him before the Grand Jury on February 5, 1973 be and the same hereby is granted, and that said testimony be and the same hereby is suppressed; and it is

FURTHER ORDERED that the indictment returned in this cause be and the same hereby is dismissed; and it is

[3] FURTHER ORDERED that the Clerk of this Court shall be and he hereby is directed to retain the Grand Jury testimony of this case on file *in camera* for purposes of appeal.

/s/ Joseph M. Hannon
Judge

SUPREME COURT OF THE UNITED STATES

No. 74-1106

UNITED STATES, PETITIONER

v.

GREGORY V. WASHINGTON

ORDER ALLOWING CERTIORARI, Filed June 1, 1976

The petition herein for a writ of certiorari to the District of Columbia Court of Appeals is granted.